IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION No. 19200 of 1999

Between:

1 A.P.Power Generation Corporation, Rep.by its Joint Secretary,
Vidyut Soudha, Hyderabad.
2 Chief Engineer,O&M, Vijayawada Thermal Power Station,
Ibrahimpatnam, Krishna District.
3 Superintending Engineer O&M, Coal Handling Plant, V.T.P.S.,
Ibrahimpatnam, Krishna District.

..... PETITIONERS

AND

1 The Commissioner of Labour, Andhra Pradesh,
Hyderabad.
2 The Deputy Commissioner Of Labour,
Eluru.
3 T.Radha Murali
C/o M.Veera Swamy, 'B'Colony, G-162, VTPS,
Ibrahimpatnam, Krishna District.
4 M.Jamayelaya,
C/o M.Veera Swamy, 'B'Colony, G-162, VTPS,
Ibrahimpatnam, Krishna District.
5 V.Sudheer,
C/o M.Veera Swamy, 'B'Colony, G-162, VTPS,
Ibrahimpatnam, Krishna District.
6 M.Muttaiah @ Mutheswara Rao,
C/o M.Veera Swamy, 'B'Colony, G-162, VTPS,
Ibrahimpatnam, Krishna District.
7 T.Ramesh,
C/o M.Veera Swamy, 'B'Colony, G-162, VTPS,
Ibrahimpatnam, Krishna District.
8 M.Veeraswamy,
C/o M.Veera Swamy, 'B'Colony, G-162, VTPS,
Ibrahimpatnam, Krishna District.

9 T.Somasekhar,
C/o M.Veera Swamy, 'B'Colony, G-162, VTPS,
Ibrahimpatnam, Krishna District.
10 V.Raja Durga Prasad,
C/o M.Veera Swamy, 'B'Colony, G-162, VTPS,
Ibrahimpatnam, Krishna District.

11 K.Nagababu,
C/o M.Veera Swamy, 'B'Colony, G-162, VTPS,
Ibrahimpatnam, Krishna District.

12 K.Srinivasa Rao,
C/o M.Veera Swamy, 'B'Colony, G-162, VTPS,
Ibrahimpatnam, Krishna District.
13 G.Mohan Rao,
C/o M.Veera Swamy, 'B'Colony, G-162, VTPS,
Ibrahimpatnam, Krishna District.
14 N.Basant,
C/o M.Veera Swamy, 'B'Colony, G-162, VTPS,
Ibrahimpatnam, Krishna District.
15 V.Ganapathi Rao,
C/o M.Veera Swamy, 'B'Colony, G-162, VTPS,
Ibrahimpatnam, Krishna District.
16 Ch.Venkateshwara Rao,
C/o M.Veera Swamy, 'B'Colony, G-162, VTPS,
Ibrahimpatnam, Krishna District.
17 K.Kanta Rao,
C/o M.Veera Swamy, 'B'Colony, G-162, VTPS,
Ibrahimpatnam, Krishna District.
18 T.Venkateshwara Rao,
C/o M.Veera Swamy, 'B'Colony, G-162, VTPS,
Ibrahimpatnam, Krishna District.
19 D.Ratna Singh,
C/o M.Veera Swamy, 'B'Colony, G-162, VTPS,
Ibrahimpatnam, Krishna District.
20 M.Ravi Kumari,
C/o M.Veera Swamy, 'B'Colony, G-162, VTPS,
Ibrahimpatnam, Krishna District.
21 G.Seetharamayya,
C/o M.Veera Swamy, 'B'Colony, G-162, VTPS,
Ibrahimpatnam, Krishna District.
22 V.Narasimha Rao @ Raju,
C/o M.Veera Swamy, 'B'Colony, G-162, VTPS,
Ibrahimpatnam, Krishna District.
23 P.S.Prakash Rao,
C/o M.Veera Swamy, 'B'Colony, G-162, VTPS,
Ibrahimpatnam, Krishna District.
24 M.Mohan,
C/o M.Veera Swamy, 'B'Colony, G-162, VTPS,
Ibrahimpatnam, Krishna District.
25 K.Vasu,
C/o M.Veera Swamy, 'B'Colony, G-162, VTPS,

Ibrahimpatnam, Krishna District.

26 S.Kanna Rao,
C/o M.Veera Swamy, 'B'Colony, G-162, VTPS,
Ibrahimpatnam, Krishna District.

27 Shaik Baji,
C/o M.Veera Swamy, 'B'Colony, G-162, VTPS,
Ibrahimpatnam, Krishna District.

28 D.Dambur,
C/o M.Veera Swamy, 'B'Colony, G-162, VTPS,
Ibrahimpatnam, Krishna District.

29 M.Koteswara Rao,
C/o M.Veera Swamy, 'B'Colony, G-162, VTPS,
Ibrahimpatnam, Krishna District.

30 K.Yesu Mariamma,
C/o M.Veera Swamy, 'B'Colony, G-162, VTPS,
Ibrahimpatnam, Krishna District.

31 T.Lakshmi Narayana,
C/o M.Veera Swamy, 'B'Colony, G-162, VTPS,
Ibrahimpatnam, Krishna District.

32 S.V.Durga Rao @ David,
C/o M.Veera Swamy, 'B'Colony, G-162, VTPS,
Ibrahimpatnam, Krishna District.

33 V.Nagendra Kumar,
C/o M.Veera Swamy, 'B'Colony, G-162, VTPS,
Ibrahimpatnam, Krishna District.

34 K.Venkat Lakshmi,
C/o M.Veera Swamy, 'B'Colony, G-162, VTPS,
Ibrahimpatnam, Krishna District.

35 M.Srinivasa Rao,
C/o M.Veera Swamy, 'B'Colony, G-162, VTPS,
Ibrahimpatnam, Krishna District.

36 P.China Babu,
C/o M.Veera Swamy, 'B'Colony, G-162, VTPS,
Ibrahimpatnam, Krishna District.

37 T.Sumathi
C/o M.Veera Swamy, 'B'Colony, G-162, VTPS,
Ibrahimpatnam, Krishna District.

38 T.Babu Rao,
C/o M.Veera Swamy, 'B'Colony, G-162, VTPS,
Ibrahimpatnam, Krishna District.

39 G.Lokanadam,
C/o M.Veera Swamy, 'B'Colony, G-162, VTPS,
Ibrahimpatnam, Krishna District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or direction more fully in the nature of Writ of Mandamus declaring report of Respondent 1 in Proceedings dt.19.6.99 as illegal, improper, arbitrary and consequently declare the respondents 3 to 39 are not entitled for absorption in the service of A.P.Genco Ltd.

Counsel for the Petitioner: SMT.E.URMILA

Counsel for Respondent Nos.1 and 2: GP FOR LABOUR
Counsel for Respondent Nos.3 to 39: MR DHONDAY RAM MANE

The Court made the following:

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ORDER:

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This writ petition is filed by the A.P.Power Generation Corporation, represented by it's Joint Secretary, Vidyut Soudha, Hyderabad and two others, seeking a Mandamus, declaring the report of the 1st respondent in his proceedings dated 19.06.1999, as illegal, improper, arbitrary, and consequentially to declare that respondent Nos.3 to 39 are not entitled for absorption in the service of A.P.Genco.

It is the case of the petitioners that the Government of Andhra Pradesh constituted a committee to identify various categories of posts wherein the perennial nature of work is there and contract labour are engaged in discharging such nature of works. After a detailed enquiry, the committee constituted in this regard, identified 33 categories of posts in generating stations of the then Andhra Pradesh State Electricity Board (hereinafter referred to as "the APSEB") and submitted a report. In pursuance to the said report, the Government of Andhra Pradesh issued G.O.Ms.No.41, dated 23.09.1996, prohibiting the engagement of contract labour in 33 categories of posts specified therein in exercise of powers under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970. In pursuance to the said G.O. the Corporation has issued B.P.Ms.No.37, dated 18.05.1997, B.P.Ms.No.260, dated 19.12.1997, B.P.Ms.No.272, dated 31.12.1997 and B.P.Ms.No.326, dated 14.03.1998 from time to time, wherein guidelines were issued to absorb personnel engaged in the prohibited categories. While the process was going on, number of candidates like respondent Nos.3 to 39 claimed benefits of the above B.Ps. though

they are not entitled for such consideration. Thus, respondent Nos.3 to 39 have approached this Court and filed W.P.No.6118 of 1998 claiming absorption in the APSEB service as per G.O.Ms.No.41, dated 23.09.1996 and B.P.Ms.No.260, dated 19.12.1997. While disposing of the above writ petition, this Court directed the Labour Commissioner, Hyderabad to verify the case of the concerned employees as to whether they were working under the Principal Employer as on 23.09.1996 as per G.O.Ms.No.41, dated 23.09.1996 and also in the prohibited categories of posts in terms of the said G.O. In pursuance to the directions of this Court, the Commissioner of Labour, Hyderabad, submitted a report dated 19.06.1999, stating that petitioner Nos.3 to 39 fall in one of the category under category No.7, category No.9 or category No.23. The said report was based on findings of the Deputy Commissioner of Labour, Eluru and on his personal hearing of the parties. Aggrieved by the same, the present writ petition is filed.

Detailed separate counter affidavits are filed by the respondents 1 and 2, and respondents 3 to 39 respectively, denying the allegations made by the petitioners and asserting that the petitioners rendered service in the 33 prohibited categories and they were on rolls as on the date of issuing of G.O.Ms.No.41, dated 23.09.1996, and therefore, the report submitted by the Commissioner of Labour, Hyderabad is just and proper and does not call for interference of this Court under Article 226 of the Constitution of India since no illegality or infirmity committed by the Commissioner of Labour, Hyderabad while submitting his report.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the report of the Commissioner of Labour, Hyderabad, dated 19.06.1999, and also the report of the Deputy Commissioner of Labour, Eluru, dated 25.03.1999.

At the outset I am of the opinion that neither the Deputy Commissioner of Labour, Eluru nor the Commissioner of Labour, Hyderabad have committed any error in submitting the report, calling for interference of this Court under Article 226 of the Constitution of India. In fact the Deputy Commissioner of Labour, Eluru against each issue framed, gave a categorical finding that the respondents herein were working in the prohibited category No.7, category No.9 and category No.23 as on 23.09.1996. It was also stated in the report of the Deputy Commissioner of Labour, Eluru that the management did not deny in their counter about the fact of the petitioners working in

the prohibited area except saying that the contractors were awarded maintenance works, which are not of continuous nature and need based. In fact the nature of work attended by each and every respondent was taken into consideration by the Deputy Commissioner of Labour, Eluru and arrived at a finding that they fall into one of these categories such as category No.7, category No.9 and category No.23 in which the contract labour system has been prohibited through G.O.Ms.No.41, dated 23.09.1996. The Commissioner of Labour, Hyderabad, while apart from relying upon the report of the Deputy Commissioner of Labour, Eluru, he himself personally heard the parties and held that out of 56 only 37 petitioners were actually engaged by the management of VTPS through several contractors who are also named as respondents in W.P.No.6118/1998 in terms of G.O.Ms.No.41, dated 23.09.1996 in the prohibited categories of posts.

Apart from this, a similar issue has come up for consideration before a learned single Judge of this Court in W.P.No.4211 of 2002 which was dismissed by an order dated 16.06.2004, which reads as under:

> "A.P.Genco assails the report of the Assistant Commissioner of Labour, Vijayawada, dated 15.02.2001 and seeks declaration that the 2nd respondent is not entitled for absorption in the service of A.P.Genco. The 2nd respondent herein earlier filed W.P.No.7268 of 2000 assailing the action of the writ petitioner in rejecting his case for absorption in the respondent-Board, in the post of Civil Engineer or any other suitable post as illegal and sought direction to the writ petitioner herein to reconsider his case for absorption as per his qualifications and in accordance with B.P.Ms.No.36 and 37, dated 18.05.1997. While setting aside the rejection order dated 04.12.1999 following an earlier judgment in W.P.No.9063 of 1999, dated 14.03.2000, the writ petition No.7268 of 2000 was disposed of in substance, directing the 1st respondent herein to conduct an enquiry and submit a report as to whether the 2nd respondent herein was entitled to the benefits under B.P.Ms.No.36 and 37 and whether he worked in any one of the 33 prohibited categories enumerated in G.O.Ms.No.41, dated 23.09.1996.
>
> Conditioned by the Mandamus issued by this Court supra, the 1st respondent conducted the enquiries and submitted the impugned report concluding rationally on the basis of the evidence available to the 1st respondent that the 2nd respondent had worked in the Electrical Maintenance CHP/O&M/Stage.III/V.T.P.S. under the principal employer and

in a prohibited category i.e., Serial No.23 (Electrician) setout in G.O.Ms.No.41, dated 23.09.1996.

A perusal of the report discloses no infirmity in the analysis of the facts leading to the conclusions set out in the report, warranting interference by this Court under Article 226 of the Constitution of India.

On the analysis above, the writ petition is without merits and is accordingly dismissed. No costs."

Following the said judgment, two other writ petitions viz., W.P.No.25086 of 2001 and W.P.No.25072 of 2001, questioning the report submitted by the Commissioner of Labour, were disposed of by this Court on 09.07.2004 and 02.09.2004 respectively.

For all the above reasons, the impugned order does not warrant interference of this Court under Article 226 of the Constitution of India.

Therefore, the Writ Petition is devoid of merits and accordingly dismissed. No order as to costs.

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C.V.RAMULU,J

Dated: 07.07.2005

Dsr

ASSISTANT REGISTRAR

To:

1. The Commissioner of Labour,

A.P.Hyderabad

2. The Deputy Commissioner of Labour,

Eluru

3. Two CCs to the Government Pleader

for Labour, High Court Buildings,

Hyderabad (OUT)

4. Two CD copies

5. 1 CC to MR.DHONDAY RAM MANE

*Form-NIC-OGS/WP{**SUNITHA**}*